

CIVIL SERVICE COMMISSION MINUTES

January 21, 1998

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt, President
Gordon Austin, Vice President
Roy Dixon

Comprising a quorum of the Commission

Larry Cook, Executive Officer
Ralph Shadwell, Deputy County Counsel
Joy Kutzke, Reporting

Commissioners Valencia-Cothran and Paul Thomas, absent

CIVIL SERVICE COMMISSION MINUTES
January 21, 1998

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
7,8,9,10,12,24, 25,29	14,25	12,13	5

COMMENTS Motion by Dixon to approve all items not held for discussion;
seconded by Austin. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda.

a. Commissioner Valencia-Cothran: Luis Michael Bustillos, Esq. and Sarah Wiley, Esq., on behalf of **Alfonso Rodriguez** appealing an Order of Termination from the Department of Health Services.

b. Commissioner Brummitt: Roy Landers, Esq., on behalf of **Deborah Battiste** appealing an Order of Removal from the Probation Department.

c. Commissioner Brummitt: Pablo Carrillo, S.E.I.U., Local 2028, on behalf of **Susan Sheppard-Michalski**, appealing an Order of Automatic Separation from the Probation Department.

d. Ralph Peters, Deputy County Counsel: Litigation Re Interest Payments on Back Pay Awards.

REGULAR AGENDA

NOTE: Five minutes total will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

ELECTIONS

1. Elections of President and Vice-President of the Commission for 1998.
This item was trailed and voted on at the end of the meeting.

Motion by Brummitt that Commissioner Austin be appointed as President and Commissioner Dixon as Vice President for 1998; seconded by Dixon. Carried.

MINUTES

2. Approval of the Minutes of the regular meeting of December 17, 1997.

Approved.

CONFIRMATION OF ASSIGNMENTS\REASSIGNMENTS

3. Commissioner Brummitt as hearing officer in the appeal of **Jaime Aranda** from an Order of Termination from the Assessor/Recorder/County Clerk.

Confirmed.

4. Commissioner Austin as hearing officer in the appeals of **Stephen Maier** from Order of Suspension and an Order of Reduction in Compensation from the Sheriff's Department.

Confirmed.

WITHDRAWALS

5. James Gattey, Esq., on behalf of **Joseph Mendoza** appealing an Order of Suspension from the Sheriff's Department. Commissioner Brummitt was assigned as Hearing Officer.

Withdrawn.

STIPULATED AGREEMENT

6. Commissioner Brummitt: Everett Bobbitt, Esq., on behalf of **Jeffrey Jackson** appealing an Order of Suspension from the Sheriff's Department.

This item is continued from the CSC meeting of 12/17/97.

RECOMMENDATION: Approve agreement.

A stipulated agreement was reached between the parties. The hearing officer fully reviewed the Stipulation and determined that the public would be best served if the Commission accepts it. Therefore, it is recommended that: the Stipulation dated January 7, 1998, be approved by the Civil Service Commission; the Order of Suspension be changed to a Letter of Reprimand; full back pay and benefits be reinstated for that portion of the previously ordered suspension which has been served; and this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Stipulated agreement approved.

DISCIPLINARY FINDINGS

7. Commissioner Valencia-Cothran: Luis Michael Bustillos, Esq. and Sarah Wiley, Esq., on behalf of **Alfonso Rodriguez** appealing an Order of Termination from the Department of Health Services.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I -- Conduct Unbecoming an Officer or Employee of the County (sexual harassment against other employees); Cause II -- Insubordination; Cause III -- Discourteous Treatment of the Public or other Employees; Cause IV -- Acts Incompatible with or Inimical to the Public Service; and Cause V -- Failure of Good Behavior. Employee was charged with inappropriately touching and fondling subordinate female employees while in his office; ignoring resistance and objections of said female employees; continuing his inappropriate conduct after warnings from supervisors; and such actions were calculating, intentional and done in a manner so as to hide such conduct from his superiors. Employee's testimony and evidence at the hearing was that physical contact with all employees other than one individual was unintentional and incidental to working in a small work space; physical contact with one of the employees was consensual; Employee was never given any clear notice by the Department that his conduct was inappropriate; the Department violated principles of progressive discipline; and his conduct was correctable and has been corrected with professional counseling. As the result of the testimony presented at the hearing, this hearing officer has concluded that Employee did engage in inappropriate physical contact with subordinate female employees; that the Department's decision to terminate Employee's employment is appropriate in light of the number of subordinate employees subjected to Employee's conduct, the amount of time involved, the prior warnings given to Employee, his continuation of inappropriate physical contact with subordinate female employees and the potential liability of the County if it continued to employ Employee. Employee

is guilty of Causes I, II, III, IV and V. Therefore, it is recommended that the Amended Order of Termination be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Dixon to approve Findings and Recommendations; seconded by Austin. Carried.

8. Commissioner Brummitt: Roy Landers, Esq., on behalf of **Deborah Battiste** appealing an Order of Removal from the Probation Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - Dishonesty (submitting false statements to court regarding case information); Cause 2 - Insubordination; Cause 3 - Conduct Unbecoming a Probation Officer; Cause 4 - Failure of Good Behavior; and Cause 5 - Acts Incompatible with and Inimical to Public Service. Employee allegedly short-cut her work load by failing to send Department required letters to victims of crimes informing them of their rights and other pertinent information regarding the case, including hearing dates and knowingly falsifying probation officer's reports to indicate that such letters had been sent. Employee's position is that there is insufficient evidence that she failed to send victim letters where she had reported that such victim letters were sent and that even if such letters were not sent where they had been reported to be sent, that her conduct was unintentional and the result of the circumstances was beyond her control. As the result of the testimony given at the hearing this officer concludes that Employee did in fact deliberately falsify several reports and that she knew of the importance of complete honesty in her representations to the Court. Employee is guilty of Causes I, II, III, IV and V. It is therefore recommended that the Order of Removal and Charges be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Brummitt to approve Findings and Recommendations; seconded by Dixon. Carried.

SEPARATIONS

9. Commissioner Brummitt: Pablo Carrillo, S.E.I.U., Local 2028, on behalf of **Susan Sheppard-Michalski**, appealing an Order of Automatic Separation from the Probation Department.

FINDINGS AND RECOMMENDATIONS:

Employee was served with an Order of Automatic Separation and filed a timely appeal with the Commission. The hearing was duly noticed and came on for hearing on December 3, 1997, at which time Employee was not in attendance due to a medical reason. The hearing adjourned and reconvened January 6, 1998, at which time Employee's representative appeared on her behalf; however, Employee failed to appear. It is concluded that Employee has abandoned her appeal. Therefore it is recommended that the Order of Automatic Separation be affirmed; and that the Proposed Decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Dixon. Carried.**

COMPULSORY LEAVES

Findings

10. Commissioner Brummitt: **Robert Stence** appealing an Order of Compulsory Leave from the Sheriff's Department.

This item is continued from the CSC Mtg. Of 12/17/97

FINDINGS AND RECOMMENDATIONS:

Employee was placed on Compulsory Leave due to a hearing impairment which allegedly created deficiencies in his performance and created a safety hazard. The Department made attempts to accommodate Employee by changing his work assignment and limiting his duties as much as reasonably possible. Testimony at the hearing by a medical expert professional revealed that Employee's hearing impairment presented a danger to coworkers because of his physical inability to respond in certain situations. Although the ADA requires reasonable accommodations, it does not require that essential duties of the job be changed to accommodate Employee. It is concluded that the Department's placement of Employee on Compulsory leave under the provisions of Compensation Ordinance Section 4.3.8 was proper. Therefore, it is recommended that the Appointing Authority properly placed Employee on Compulsory Leave and that Employee's appeal be denied; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Dixon. Carried.**

Complaints

11. Deborah Olberding, S.E.I.U., Local 2028, on behalf of **Carol Kerr** appealing an Order of Compulsory Leave from the District Attorney.

RECOMMENDATION: Assign a hearing officer.

Staff recommendation approved — Commissioner Valencia-Cothran assigned as hearing officer.

DISCRIMINATION COMPLAINTS

12. **Charles Gilstrop**, an employee in the Department of Public Works, alleging racial/disability discrimination by the Department of Public Works.

RECOMMENDATION: Assign to Commissioner and forward to EOMO for investigation and report back to the Commission.

Mr. Cook, Executive Officer, relayed to the Commission, at Mr. Gilstrop's request, information received in a recent telephone conversation. Mr. Cook explained that at the time the staff report was prepared, we were of the assumption that Mr. Gilstrop had been accommodated by the Department by transferring him from South Bay Municipal Court, where he was temporarily assigned, to the North County Municipal Court, in the region where he lives. Staff believed his request for a temporary stay order would be a moot point as the result of the move. Mr. Gilstrop indicated that his request for a temporary stay order is still before the Commission and the reason is that he does not drive, he carpools to work, he lives in a remote area, and that it takes him approximately one hour to get home from where he is currently employed at the North County Court where he is on temporary assignment. Mr. Cook informed the Commission that it does have, under Rule VI, the authority to issue a stay order to maintain the status quo until the conclusion of the Commission's investigation. Mr. Cook's recommendation remains to assign an investigative officer and forward Mr. Gilstrop's complaint to EOMO for investigation and report back to the Commission; but to deny his request for a stay order. Commission staff will request an early response from EOMO in this instance.

Commissioner Dixon moved that staff recommendation be approved; seconded by Austin. Carried. Commissioner Dixon assigned as investigating officer.

13. **Natalie H. Cohen**, an employee in the Office of the Assessor/Recorder/County Clerk, alleging disability, gender and age discrimination by the Assessor/Recorder/County Clerk.

RECOMMENDATION: Assign to Commissioner and forward to EOMO for investigation and report back to the Commission.

Staff recommendation approved – Commissioner Brummitt assigned as hearing officer.

PROCEDURAL INVESTIGATIONS

Complaints

14. James Gattey, Esq., on behalf of **Fabian J. Martinez** request for a Rule XI investigation regarding the manner in which the Probation Department handled Mr. Martinez's dismissal during his probationary period.

RECOMMENDATION: Deny request.

Continued to next CSC meeting.

SELECTION PROCESS FINDINGS/COMPLAINTS

Findings

15. **Richard George** appeal of removal of his name by DHR from the employment list for Deputy Sheriff Lateral for failure to meet the employment standards.

16. **Michael A. Vesey** appeal of removal of his name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

17. **Paul Joyce** appeal of removal of his name by DHR from the employment list for Deputy Sheriff for failure to meet the employment standards.

18. **David Duff** appeal of removal of his name by DHR from the employment list for Correctional Deputy Sheriff for failure to meet the employment standards.

19. **Tarra L. Thomas** appeal of removal of her name by DHR from the employment list for Correctional Deputy Probation officer I for failure to meet the employment standards.

20. **Michelle McCullough** appeal of removal of her name by DHR from the employment list for Correctional Deputy Probation Officer I for failure to meet the employment standards.

21. **Kenneth Duane Miller** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff for failure to meet the employment standards.

22. **Chris Percupchick** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff for failure to meet the employment standards.

23. **Erik B. Pollock** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff for failure to meet the employment standards.

RECOMMENDATION: Ratify Item Nos. 15 through 23. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Items 15 through 23 ratified.

Complaints

24. **Grimsby Daniel** appealing the selection process by the Department of Human Resources having been denied the opportunity to compete for the classification of Revenue and Recovery Officer II.

RECOMMENDATION: Deny request.

Mr. Daniel addressed the Commission explaining his position as it relates to the timeliness of the filing of his appeal as well as his contention that he did obtain the relevant experience required in order to compete for the classification of Revenue and Recovery Officer II. He is asking that his application be reviewed and accepted allowing him the opportunity to compete for a position. Blair Provo, DHR representative, responded that Mr. Daniel did not meet the specified minimum requirements in order to compete and that his appeal was not timely filed with DHR.

Motion by Austin to approve staff recommendation, seconded by Dixon. Carried.

25. Deborah Olberding, S.E.I.U., Local 2028, on behalf of **Katherine M. Walker**, Investigative Specialist II, appealing the selection process by the District Attorney (DA) due to her non-selection for the classifications of Investigative Specialist Supervisor and Investigative Specialist III.

RECOMMENDATION: Ask your Executive Officer to give an interim report and continue to your next meeting on February 4, 1998.

Larry Cook, Executive Officer, provided an interim report to the Commission. He explained that this matter is a combination of issues: (1) Rule X Selection process request. Ms. Walker is requesting a hearing regarding her nonselection as an Investigative Specialist III or as an Investigative Specialist Supervisor; and (2) she is also informing you that she believes that the reclassification process that was conducted by DHR in concert with the DA was flawed for the former classification of Victim Witness Claim Technician (VWCT) which has been changed to Investigative Specialist. She claims that the people that were VWCT's received an unfair advantage by having served in that classification which was reclassified allowing them to be interviewed and promoted into the higher classification at Ms. Walker's expense and potentially at the expense of other people who were not in that same classification. Mr. Cook explained that classification comes under Civil Service Rule XII which rule is intended for employees who believe they are working out of class. Ms. Walker is not claiming she is working out of class, she is claiming that the classification process relating to VWCTs was flawed. If it were found to be flawed, she may not have a remedy under Rule X. The DA contends that Ms. Walker did not timely file her rule X appeal.

Deborah Olberding, S.E.I.U. Local 2028, addressed the Commission on behalf of Katherine Walker, an Investigative Specialist II in the DA's Office, concerning the request for a selection process appeal hearing. She stated that she did not wish to have a "mini hearing" at today's meeting. She did agree with staff's recommendation to continue the matter to the next CSC meeting in order for CSC staff to gather the information needed to make an informed recommendation.

Mark Mandel countered that the DA's Office did want to go forward with a discussion and ruling on whether Katherine Walker should be granted a hearing.

Larry Cook suggested that the Commission allow Deborah Olberding and Mark Mandel to briefly discuss the matter in order for the Commission to determine the appropriate action to be taken.

Mark Mandel began the discussion by stating that the DA's Office does not believe that this is a Rule X violation because 1) Katherine Walker is not appealing the selection process; and 2) it is not a timely allegation. He chronicled why the DA believes the appeal is not timely. In early 1997 the DA's Office asked for State funding for the Victim Witness Unit, a grant-funded program from the State,

to reclassify five positions. The money was allocated and Human Resources approved a reclassification study in June, 1997 and the Board of Supervisors approved the reclassification of the five positions in July, 1997. In July, 1997 the DA's Office met twice with S.E.I.U. and DA employees, including Ms. Walker, and no issues were raised at that time about the reclassification. The examination process went through DHR in September, 1997 and again the union or the employees said nothing. The DA's Office held another meeting with the union in October, 1997 and once again no one voiced any concerns. The appointments occurred on October 23 and 24, 1997. The DA had a meeting with Mary Grillo, of S.E.I.U., discussing all the reclassifications and again, there was nothing but positive praise given to the DA's Office. The appointees were reclassified and went through a Civil Service-based examination. The applicants who were not appointed were notified by telephone. Mr. Mandel stated that the DA gave ample opportunities to S.E.I.U. and the Investigative Specialist classification people to let them know the appointments were going to be made. He concluded saying that the DA's Office is not new to reclassifying employees (over 700 out of 1,200-1,300) and that the Department has provided opportunities through these reclassifications for employees to stay in the Department, to receive training, and to follow a positive career track. He further added that by adding five new positions to Ms. Walker's unit has actually increased her promotional opportunity by 20%. Based on the above, the Department does not believe that there is a Rule X violation and the fact that everything happened between June and October, the appeal is not timely.

Ms. Olberding responded that this is a selection process appeal. Ms. Walker interviewed, was on a list for selection for a promotional opportunity, she was not selected, other applicants were successful and this constitutes a selection process appeal. She continued to state that during the calls that the Department made to the different people who were certified for these positions in order to interview, they were asked, every one of them, to wave because the Department was trying to get the VWCTs their reclassification, and most of them did wave. It was already arranged that certain individuals would be selected, which in effect denied Ms. Walker a promotional opportunity in this instance. She explained that at every opportunity the union told the Department they did not want those people to be Investigative Specialist's (IS) and that at the meetings the Department chose words very carefully to explain how it would feel about the union and the employees going against this. The union has no problem with the employees getting more money, in fact that is what this adjustment was supposed to be. When it went before the Board of Supervisors it did not say these people were going to be IS's, it said they were going to be increased in compensation. The union was told, at the first meeting, that there would be an increase

in compensation and that DHR would determine the appropriate classification. The union has never been for the reclassification of VWCTs to IS's, however, the union is in favor of them getting more money. Regarding timeliness, she states that they are timely and they have documentation to prove this.

The Commission voted to continue this matter to the next CSC meeting.

Motion by Austin to continue to next CSC meeting; seconded by Dixon. Carried.

OTHER MATTERS

Extension of Temporary Appointments

26. Probation Department

- A. Senior Cook (David Harrell)
- B. 1 Food Services Worker (Dann Grace)

27. Department of Social Services

- A. 1 Residential Care Worker I (Maysa Hussein)
- B. 1 Residential Care Worker II (Willard Fontenot)

28. Planning and Land Use

- 1 Environmental Management Specialist II (Margaret A. Loy)

RECOMMENDATION: Ratify item Nos. 26 through 28.

Item Nos. 26 through 28 ratified.

29. Public Input.

Mr. James Gattey, Esq. presented a request to the Commission for interpretation of Rule 7.7.2. He explained that the provision of this rule gives the employee appealing or the employee's designated representative the right to interview other employees having knowledge of the acts or omissions in which the discipline is based. This matter is presently before the Commission in the context of a hearing appealing a removal. He described, in detail, the circumstances surrounding a request he made to interview witnesses, in a disciplinary case currently on appeal with the Commission, which has lead to this request for interpretation of the rule. Mr. Gattey

stated that this issue has not been previously addressed by the Commission, and is one that can present problems in the future unless it is resolved. Ralph Shadwell, Deputy County Counsel, sought clarification as to whether Mr. Gattey is requesting interpretation as to whether Section 7.7.2 mandates employees to make themselves available, as well as compelling them to answer questions. Mr. Gattey responded that if they are to interviewed, the answer is yes.

Commissioner Dixon moved that Mr. Gattey's request for the Commission's interpretation of Civil Service Rule 7.7.2 be placed on the Commission's February 18, 1998 agenda; seconded by Brummitt. Carried.

ADJOURNMENT: 3:50 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE FEBRUARY 4, 1998.